

From: [Cohen, Adam](#)
To: [Wirtschafter, Joshua](#)
Cc: [Cohen, Adam](#)
Subject: RE: Leviathan and Yerington Sites - Substitution of Financial Assurance
Date: Tuesday, December 17, 2013 6:48:36 PM

Josh – I'm still waiting on the list of questions following our November 15 call about financial assurance and captive insurance. Can you send that this week?

From: Cohen, Adam
Sent: Friday, November 15, 2013 10:27 AM
To: 'Wirtschafter, Joshua'; 'Helmlinger, Andrew'
Cc: Cohen, Adam
Subject: RE: Leviathan and Yerington Sites - Substitution of Financial Assurance

Josh – I understood from our call on November 6, 2013 that you would be sending a list of questions relating to the financial status of Saturn Insurance, Jupiter Insurance, and their affiliated companies. When do you expect to send the questions? I am still planning to get you and Andrew the list of other sites where EPA has accepted captive insurance as financial assurance. I hope to get more information on that later today.

Adam S. Cohen **303.892.7321 (Direct)**
 720.936.3017 (Mobile)



www.dgslaw.com | 303.892.9400 | Fax: 303.893.1379

This E-mail message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply E-mail and destroy all copies of the original message.

From: Wirtschafter, Joshua [<mailto:Wirtschafter.Joshua@epa.gov>]
Sent: Wednesday, November 06, 2013 3:21 PM
To: Cohen, Adam; Helmlinger, Andrew
Subject: RE: Leviathan and Yerington Sites - Substitution of Financial Assurance

Hi Adam,

One question I'm planning to ask on our call today is what kind of assets are used to capitalize Saturn and Jupiter. Is it mostly BP stock or corporate bonds? Or are they invested in some other assets? I thought I'd ask now to give you a chance to find out before the call.

Looking forward to talking to you soon.

- Josh

From: Cohen, Adam [<mailto:Adam.Cohen@dgslaw.com>]
Sent: Monday, November 04, 2013 9:10 AM
To: Wirtschafter, Joshua; Helmlinger, Andrew
Cc: Cohen, Adam; 'Lucari, James L'
Subject: RE: Leviathan and Yerington Sites - Substitution of Financial Assurance

Josh and Andrew – I'd like to follow-up with you on this request to use an alternative form of financial assurance for the Leviathan and Yerington sites. Can we schedule a brief call later this week? Wednesday afternoon?

Adam S. Cohen **303.892.7321 (Direct)**
 720.936.3017 (Mobile)



www.dgslaw.com | 303.892.9400 | Fax: 303.893.1379

This E-mail message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply E-mail and destroy all copies of the original message.

From: Cohen, Adam
Sent: Wednesday, September 18, 2013 1:37 PM
To: 'Wirtschafter, Joshua'; 'Helmlinger.Andrew@epa.gov'
Cc: Cohen, Adam; 'Lucari, James L'
Subject: FW: Leviathan and Yerington Sites - Substitution of Financial Assurance

Josh and Andrew – As I have discussed recently with Josh, Atlantic Richfield seeks the Agency's concurrence to substitute a new form of financial assurance for the existing letters of credit provided under the AOC's for the Leviathan and Yerington sites. For Leviathan, this will first require a modification to the current AOC to add EPA-approved insurance as a financial assurance option. For Yerington, it is my understanding that this option is already provided in the current AOCs. As I have also explained to Josh, Atlantic Richfield's preferred form of financial assurance mechanism will be an insurance policy that ensures the payment or performance of the required work and that is underwritten by Saturn Insurance Inc. (Saturn), which is an insurance captive of BP America Inc. Atlantic Richfield would like to complete the substitution before it has to renew the current letters of credit for Leviathan and Yerington in late October 2013.

I am attaching here a copy of a Saturn template policy that is similar to what Atlantic Richfield proposes as financial assurance for the amounts required at Leviathan

and Yerington under the current AOCs. Obviously, some details would need to be modified, but the template should give you a good sense of the type of coverage that the final insurance policy would provide.

It may also be helpful for you to have some background information on Saturn and captive insurance in general. That information is summarized below:

Captive insurance companies ("captives") are insurance companies established with the specific objective of insuring or reinsuring risks emanating from their parent or affiliated companies. Captive insurance companies are distinguished from commercial insurance companies by the initial funding and restriction of its coverage either to one company (so-called "pure" captive insurance where the parent establishes a captive for its exclusive use) or to an enterprise or risk retention group (e.g., brownfields redevelopment projects or a consortium of interests developing an affordable housing development). Captives can provide insurance at a lower cost and with better coverage terms than purchasing insurance policies from third party commercial carriers.

Saturn holds a Financial Strength Rating of "A-" (Excellent) from A.M. Best. Saturn also meets the uniform standards for surplus lines eligibility of the Nonadmitted and Reinsurance Reform Act ("NRRA") and is therefore an eligible insurance carrier in all 50 states. The NRRA establishes uniform minimum national requirements for nonadmitted insurers with whom surplus lines brokers may lawfully place risks. In short, a foreign nonadmitted insurer (i.e. an insurer domiciled in the U.S. but outside of the Home State) is eligible to be a surplus lines carrier in any state, if the insurer:

- 1) maintains capital and surplus of at least \$15 million (or the minimum capital and surplus requirement under the law of the insured's Home State); and
- 2) is authorized to write the insurance in its domiciliary jurisdiction.

Saturn meets both of these substantive requirements, and is therefore an eligible carrier in all 50 states. Further, Saturn is licensed in Vermont, its domiciliary jurisdiction, and authorized "to transact the business of a captive insurance company." State of Vermont, Department of Banking, Insurance, Securities and Health Care Administration, Saturn Insurance Inc., Certificate of Authority, No. 914 (March 25, 2011). Saturn obtains regulatory approval from the Department of each environmental financial assurance policy that it issues.

Saturn has capital and surplus of over \$15 million, which satisfies the NRRA standard as well as the surplus lines eligibility standard imposed by BP America's Home State of Texas. Of the 50 states, California has the strictest requirements. It has a minimum capital and surplus requirement for eligible nonadmitted insurers of \$45 million. Because Saturn meets this strict California threshold, it meets and exceeds the requirements in all 50 states. Saturn surpasses this requirement as well. As of December 31, 2012 Saturn's total shareholder's equity was \$49,693,929.

Saturn's financial strength is further enhanced through reinsurance coverage available through its sister company, Jupiter Insurance Limited. Jupiter is a 100% wholly owned subsidiary of BP Corporate Holdings Limited., which in turn is a 100% wholly owned subsidiary of BP p.l.c. As of December 31, 2012, Jupiter had capital of \$ 7.6 billion. In addition, Jupiter holds a Financial Strength Rating of "A" (Excellent) from A.M. Best.

Captive insurance can be a superior financial assurance mechanism, as compared to the commonly used financial test and corporate guarantee mechanisms. Captives are separate legal entities that are strictly regulated by the department of insurance in their domiciliary state, particularly with respect to the maintenance of capital and surplus sufficient to support their insurance programs. Captives domiciled in Vermont and other U.S. states are required to undergo annual financial audits conducted by independent auditing firms approved by the captive insurance regulators in the domiciliary states and to file loss reserve certifications issued by independent actuaries approved by the regulatory agencies. Captives must submit detailed annual reports to their regulators and must undergo periodic regulatory examinations.

We are asking that EPA Region 9 consider this information and approve Atlantic Richfield's request to use Saturn-provided insurance to satisfy the financial assurance requirements under the Leviathan and Yerington AOCs. We understand that submission of additional information may be required to accomplish this substitution, but we wanted to start this dialogue now to be best situated for a late October deadline.

I will plan to follow-up this email with a call to Josh early next week. Please feel free to contact me by phone or email in the meantime with any questions.

Adam S. Cohen **303.892.7321 (Direct)**
720.936.3017 (Mobile)

DGS Logo



www.dgslaw.com | 303.892.9400 | Fax: 303.893.1379

This E-mail message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply E-mail and destroy all copies of the original message.

***** ATTACHMENT NOT DELIVERED *****

This Email message contained an attachment named
image001.jpg
which may be a computer program. This attached computer program could
contain a computer virus which could cause harm to EPA's computers,
network, and data. The attachment has been deleted.

This was done to limit the distribution of computer viruses introduced
into the EPA network. EPA is deleting all computer program attachments
sent from the Internet into the agency via Email.

If the message sender is known and the attachment was legitimate, you

should contact the sender and request that they rename the file name extension and resend the Email with the renamed attachment. After receiving the revised Email, containing the renamed attachment, you can rename the file extension to its correct name.

For further information, please contact the EPA Call Center at (866) 411-4EPA (4372). The TDD number is (866) 489-4900.

***** ATTACHMENT NOT DELIVERED *****